

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Daniel Patrick Moynihan
United States Courthouse, 500 Pearl Street, in the City of
New York, on the 23rd day of December, two thousand nine.

PRESENT:

ROGER J. MINER,
JOHN M. WALKER, JR.,
REENA RAGGI,
Circuit Judges.

MOHAMMAD ABAD SOHAIL,
Petitioner,

v.

ERIC H. HOLDER, JR., UNITED STATES
ATTORNEY GENERAL,
Respondent.

08-3273-ag
NAC

FOR PETITIONER: Usman B. Ahmad, Long Island City,
New York.

1 **FOR RESPONDENT:** **Tony West, Assistant Attorney**
2 **General; Cindy S. Ferrier, Senior**
3 **Litigation Counsel; Joseph A.**
4 **O'Connell, Trial Attorney; Office of**
5 **Immigration Litigation, United**
6 **States Department of Justice,**
7 **Washington, D.C.**
8

9 UPON DUE CONSIDERATION of this petition for review of a
10 Board of Immigration Appeals ("BIA") decision, it is hereby
11 ORDERED, ADJUDGED, AND DECREED, that the petition for review
12 is DISMISSED.

13 Mohammad Abad Sohail, a native and citizen of Pakistan,
14 seeks review of a June 3, 2008 order of the BIA affirming
15 the September 28, 2006 decision of Immigration Judge ("IJ")
16 Philip J. Montante, Jr., which denied Sohail's application
17 for voluntary departure. *In re Mohammad Abad Sohail*, No.
18 A073 053 249 (B.I.A. June 3, 2008), *aff'g* No. A073 053 249
19 (Immig. Ct. Buffalo, NY Sept. 28, 2006). We assume the
20 parties' familiarity with the underlying facts and
21 procedural history in this case.

22 When the BIA issues an opinion that fully adopts the
23 IJ's decision, this Court reviews the IJ's decision. *Chun*
24 *Gao v. Gonzales*, 424 F.3d 122, 124 (2d Cir. 2005). We
25 review factual findings under the substantial evidence
26 standard. 8 U.S.C. § 1252(b)(4)(B); *see also Manzur v. U.S.*

1 *Dep't of Homeland Sec.*, 494 F.3d 281, 289 (2d Cir. 2007).
2 Questions of law and application of law to undisputed fact
3 are reviewed *de novo*. *Salimatou Bah v. Mukasey*, 529 F.3d
4 99, 110 (2d Cir. 2008). This Court does not have
5 jurisdiction to review the denial of a request for voluntary
6 departure, *Carcamo v. U.S. Dep't of Justice*, 498 F.3d 94, 97
7 (2d Cir. 2007) (citing 8 U.S.C. §§ 1229c(f),
8 1252(a)(2)(B)(i)), however, we do retain jurisdiction to
9 review any constitutional claims or questions of law, see 8
10 U.S.C. § 1252(a)(2)(D).

11 Sohail presents two issues over which this Court has
12 jurisdiction: (1) whether the agency applied the appropriate
13 standard in adjudicating Sohail's request for voluntary
14 departure, and (2) whether Sohail's removal proceedings
15 comported with due process in regard to Sohail's opportunity
16 to present evidence relating to his application for
17 cancellation of removal.

18 From a review of the record in this case, it is plain
19 that the IJ properly considered Sohail's request for
20 voluntary departure under 8 U.S.C. § 1229c(b), and not under
21 8 U.S.C. § 1229c(a) as Sohail contends. An alien may apply
22 for voluntary departure pursuant to § 1229c(a) if he makes

1 his application "prior to or at the master calendar hearing
2 at which the case is *initially* calendared for a merits
3 hearing." 8 C.F.R. § 1240.26(b)(1)(i)(A) (emphasis added);
4 *cf. Matter of Cordova*, 22 I. & N. Dec. 966, 968 (B.I.A.
5 1999) (holding that a master calendar hearing is a
6 "preliminary stage of the proceedings at which, even though
7 little or no testimony is taken, the Immigration Judge has
8 great flexibility to identify issues, make preliminary
9 determinations of possible eligibility for relief, resolve
10 uncontested matters, and schedule further hearings").
11 Sohail failed to make his application for voluntary
12 departure at the initial master calendar hearing on August
13 27, 2004 and at a subsequent hearing on September 7, 2005.
14 Sohail first made his application midway through the hearing
15 on September 28, 2006 - more than two years after his
16 initial master calendar hearing - and only after he decided
17 to withdraw his application for cancellation of removal. As
18 Sohail's application was not timely pursuant to § 1229c(a),
19 the IJ properly considered his application to be governed by
20 § 1229c(b).

21 We additionally conclude that Sohail was not precluded
22 from either presenting evidence in support of, or proceeding

1 with, his application for cancellation of removal. See 8
2 U.S.C. § 1229a(b)(4)(B). The record reflects that Sohail
3 withdrew his application knowingly, intelligently, and
4 voluntarily, after a discussion with his attorney, after his
5 wife and son would not appear as witnesses on his behalf,
6 and after the Government made its allegation that Sohail had
7 entered into a fraudulent marriage with his current wife.

8 _____For the foregoing reasons, the petition for review is
9 DISMISSED. As we have completed our review, any stay of
10 removal that the Court previously granted in this petition
11 is VACATED, and any pending motion for a stay of removal in
12 this petition is DISMISSED as moot. Any pending request for
13 oral argument in this petition is DENIED in accordance with
14 Federal Rule of Appellate Procedure 34(a)(2), and Second
15 Circuit Local Rule 34(b).

16 FOR THE COURT:
17 Catherine O'Hagan Wolfe, Clerk
18
19

20 By: _____